IN THE HIGH COURT OF BOMBAY AT GOA

STAMP NUMBER MAIN NO. 2347 OF 2005

MR. SAYAD MAHAMAD ALI ....Appellant

Versus

MR. M. H. MILLA, M.D. AND ANR., ...Respondents

Shri. Arun Bras De Sa, Advocate for the Appellant.
Shri E. P. Lobo, Advocate for the Respondent no.1.

Coram:- N. A. BRITTO, J.

Date:- 2nd February, 2006

P.C.

Heard Shri Arun Bras De Sa, learned Counsel on behalf of the appellant/complainant and Shri E. P. Lobo, learned Counsel on behalf of the respondent no.1/accused.

The complaint filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881, against the accused, came to be dismissed and accused acquitted on 24.06.2005. It appears that the complainant as well as the complainant's Advocate were absent on that day before the learned J.M.F.C., when the said complaint was fixed for the evidence of the complainant. However, it appears that the complainant's son appeared before the learned JMFC as Attorney of the complainant and filed an application for adjournment. However, the learned JMFC was not inclined to consider the same as no Power of Attorney was filed by the said Attorney along with the said application.

Considering the facts but without going into the merits of the same, in my view, this could be a fit case to restore the complaint to file by setting aside the Order dated 24.06.2005, subject to the complainant paying to the

accused, by way of costs, a sum of Rs.3,000/-. The said sum to be paid by the said complainant to the said accused before the trial Court and only on the said payment, the complaint be restored to file. The learned JMFC is hereby directed thereafter to proceed in accordance with law.

Parties to appear before the learned JMFC on 31.03.2006 at 10.30 a.m.

N. A. BRITTO, J.

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